

No. **874**
 110-12-988
 BOX INTERFERENCE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

-----X
 WANG ET AL. :
 :
 v. :
 BURROUGHS ET AL. :
 v. :
 BURROUGHS ET AL. (RE) :
 :
 :
 -----X

Interference No. 103,036

RECEIVED

OCT 08 1999

BOX INTERFERENCE
 Hon. Commissioner of Patents
 and Trademarks
 Washington, D.C. 20231

BOARD OF PATENT APPEALS
 AND INTERFERENCES

PETITION UNDER 37 C.F.R. §1.654(d) FOR LEAVE TO FILE
AND FOR CONSIDERATION OF BELATED WANG ET AL. MOTION NO. 29
FOR ENTRY OF JUDGEMENT ADVERSE TO BURROUGHS, ET AL.
UNDER 37 C.F.R. §1.635 and §1.662(b)

original

The party Wang, et al. seeks leave of the APJ and/or Board pursuant to 37 C.F.R. §1.654(d) to file and for favorable consideration of the attached belated Motion under 37 C.F.R. §1.635 and §1.662(b).

This Motion seeks judgement against senior party Burroughs, et al. under 37 C.F.R. §1.622(b) in relation to its cancellation of all claims in issue in its so designated continuation reissue application filed June 23, 1999. That patentee is involved through claims 1-11 of U.S. Patent No. 5,015,544 and claims 1-11, 13-16, 18-20, 22-33, 35-37 and 39-51 of Reissue Application

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Serial No. 07/963,915 pursuant to the Redecclaration of this interference, June 18, 1999 (Paper No. 25)..

This interference is not closed, nor has final action been taken therein, as the period for a request for reconsideration as set forth in 37 C.F.R. §1.658(b) remains open, and jurisdiction remains with the Board, MPEP 2361.

The filing by Burroughs, et al. canceling the involved claims thus falls clearly within the proscription of Rule 662(b). It is also squarely within the rule of Monsanto v. Kamp, 360 F.2d 499, 146 U.S.P.Q. 431 (CADC 1965) and Celanese v. Brenner, 409 F.2d 430, 159 U.S.P.Q. 712 (DC Cir., 1968), cert den. 394 U.S. 999, 161 U.S.P.Q. 832 (1969) as appeals remain pending in the District Court of the District of Columbia arising out of this interference (prevailing party Burroughs, et al. is in part a reissue applicant; appellant Cataldi, et al. is in part a patentee). Burroughs', et al. citation of In re Graff, 111 F.3d 874, 421 U.S.P.Q.2d 1471 (Fed. Cir. 1997) is inapposite. That case did not involve a related patent engaged in an interference; and did not involve a pending appeal of rulings below which could affect, among other issues, patentability.

This Motion could not have been brought earlier, as the action was only taken by the patentee on June 23, 1999; this Motion was brought on promptly to secure an early ruling thereon.

Should the Board rule adversely to the present Petition, it is respectfully requested that the papers be maintained with the file for purposes of appeal.

Kindly charge any fee in connection with this petition to Miscellaneous Deposit Account No. 19-1013 SSMP.

Respectfully submitted,



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Richard L. Catania
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Wang et al.
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(516) 742-4343

Dated: July 16, 1999

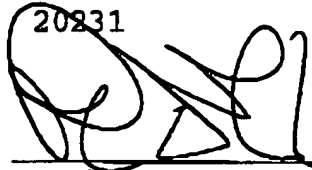
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CERTIFICATE OF MAILING

This is to certify that two (2) copies of the foregoing document of Wang, et al.'s PETITION UNDER 37 C.F.R. §1.654(d) FOR LEAVE TO FILE AND FOR CONSIDERATION OF BELATED WANG ET AL. MOTION NO. 29 FOR ENTRY OF JUDGEMENT ADVERSE TO BURROUGHS, ET AL. UNDER 37 C.F.R. §1.635 and §1.662(b) and return receipt postcard are being deposited with the United States Postal Service as Express Mail, in an envelope having Express Mail Label EL379563661US, addressed to:

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Hon. Commissioner of Patents
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Washington, D. C. 20231

Dated: July 16, 1999



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